(N. S.) 1040. The case of *Champer* v. *City of Greencastle,* 138 Ind. 339, 35 N. E. 14, 24 L. R. A. 768, 46 Am. St. Rep. 390, upon which defendant relies to sustain his contention that the ordinance is invalid does not help him, because the statute under consideration in that case was not the statute which is involved here. In the principal case the court says that it is evident that the object of the present statute was to give to cities the power which the *Champer* case, supra, held was not given in express terms under the former statute.

NEGLIGENCE—DANGEROUS MACHINERY—ATTRACTIVENESS TO CHILDREN.—The plaintiff, a child of tender years, was playing in an open field owned by the defendant company where were located a bore hole and an engine house, between which were a number of uncovered shieve wheels carrying steel cables from the engine house to the hole. The child was caught and held fast in one of the moving wheels and severely hurt. The field was used as a play ground by the children of the neighborhood, a fact within the knowledge of the defendant. *Held,* that the owner must take ordinary precautions to protect licensees from dangerous machinery on his premises. *Millum et al.* v. *Lehigh & Wilkesbarre Coal Co.,* — Pa. —, 73 Atl. 1106.

The occupant of premises who induces others to come on it by invitation, express or implied, owes to them a duty of using ordinary care to keep it in safe condition. *John Spry Lumber Co.* v. *Duggan,* 80 Ill. App. 394. The attractiveness of a thing to a child amounts to an implied invitation. *Siddall* v. *Jansen,* 168 Ill. 43, 48 N. E. 191, 39 L. R. A. 112; *Chicago etc. R. Co.* v. *Fox,* 38 Ind. App. 268, 70 N. E. 81. The owner of a dangerous locality must use due care to protect children from the consequences of their inexperience and inclination to play with attractive appliances. *McAllister* v. *Seattle Brew. & Malting Co.,* 44 Wash, 179, 87 Pac. 68;*Donk Bros. Coal Co.* v. *Leavitt,* 109 Ill. App. 385. Persons who leave unguarded, dangerous machinery or appliances to which children are likely to be attracted are held guilty of such negligence as will create liability for injuries inflicted by such instrumentalities. *Porter* v. *Anheuser-Busch Brew. Assn.,* 24 Mo. App. 1; *Biggs* v. *Consolidated Barb-Wire Co.,* 60 Kan. 217, 56 Pac. 4. Within this class of dangerous agencies fall electric motors, *Walsh* v. *Pittsburg Ry. Co.,* 221 Pa. 463; 70 Atl. 826; railroad turntables, *Sioux City etc. R. Co.* v. *Stout,* 17 Wall. 657, 21 L. ed. 745; cog wheels, *Jensen* v. *Wetherell,* 79 Ill. App. 33; elevators, *Siddall* v. *Jensen,* supra, and piles of lumber and materials, *Kansas City etc. R. Co.* v. *Matson,* 68 Kan. 815, 75 Pac. 503.

PRINCIPAL AND SURETY—CONTRACT TO INDORSE—SUFFICIENCY OF MEMORANDUM TO COMPLY WITH STATUTE OF FRAUDS.—Defendant, while in Europe received a letter from a member of a firm in which his son was interested, requesting defendant to agree to indorse the firm's notes for $10,000, in addition to a $5,000 note which he had already indorsed, and which was about due. The letter stated that the plaintiff bank would loan the money if defendant would cable the bank he would indorse to the amount of $15,000. Defendant cabled the bank: "Will endorse ten thousand," and plaintiff

loaned the firm this amount on two notes of $5,000 each. In this action for damages for breach of contract to indorse the notes, *held,* that the cablegram was not alone sufficient memorandum within the Statute of Frauds to bind the sender as an indorser of the notes. *Greenwich Bank of City of New York* v. *Oppenheim* (1909), 118 N. Y. Supp. 297.

As a general rule a verbal agreement by one person to make or indorse a promissory note given in payment of the debt of another or to execute it as his surety is as clearly a collateral promise as a direct promise to pay such debt and is within the Statute of Frauds. (20 CYC. 166) The important question was, did the cablegram constitute a sufficient note or memorandum to satisfy the policy and letter of the statute. That a cablegram will furnish a sufficient note or memorandum, provided it embraces the essentials of the contract, there is no dispute. See MECHEM, SALES, §429. HOUGHTON, J., in a separate opinion concurred in the judgment of the majority, but did not concur in the proposition that if plaintiff had proved the letter was sent with its knowledge there would have been no binding contract, but on the contrary held it would have been an acceptance to the extent of $10,000. In *Palmer* v. *Marquette & Pacific Rolling Mill Co.,* 32 Mich. 274, COOLEY, J., says: "It is manifest that on some such matters which are of the very essence of the contract, the telegram settles nothing." The principal case is supported by *Hazard* v. *Day,* 14 (Allen) 487; *Palmer* v. *Marquette & Pacific Rolling Mill Co.,* supra, *Little* v. *Dougherty,* 11 Colo. 103, 17 Pac. 292; *Breckenridge* v. *Crocker,* 78 Cal. 529; but *Godwin* v. *Francis,* L. R. 5 C. P. 295; *Gaines* v. *McAdam,* 79 Ill. App. 201, would seem to modify somewhat the doctrine of these decisions.

REAL PROPERTY—STANDING TIMBER—SALE AND DELIVERY.—In 1902 plaintiff bought certain standing timber, paying for the same and impressing thereon his brand, but leaving the same standing. The contract of sale was an oral one. In 1903 the legislature of Virginia passed a law prescribing the method of registering brands used on standing timber and also provided that the same should apply to all timber then branded. Plaintiff registered his brand in 1904. The trees were again sold and the second purchaser cut them and converted them to his own use. Plaintiff, the original purchaser, now sues in trover for damages. *Held,* he can recover. *Hurley* v. *Hurley* (1909), — Va. —, 65 S. E. 472.

Growing trees are a part of the land and a sale of them must be in writing under the Statute of Frauds. *Fluharty* v. *Mills,* 49 W. Va. 446, 38 S. E. 521; *Stuart* v. *Pennis,* 91 Va. 688. A parol sale of growing timber to be cut and removed is void under the Statute of Frauds. *Walton* v. *Lowrey,* 74 Miss. 484, 21 South. 243. The basis of the decision in the principal case is Subsec. 6, of Section 1906c, Va. Code, 1904, providing that "the placing of such brand or trademark on a log, tree, or other marketable timber shall be deemed and held to be a change of ownership and possession," and the further provision is made in Subsec. 2 of the same section, that when a brand heretofore used has been adopted, the law shall apply to trees and timber "heretofore marked." The defendant contends that the act cannot thus be given a retroactive effect as it would impair the obligation of contract. Retrospective force will never